

SECOND REGULAR SESSION

[P E R F E C T E D]

SENATE BILL NO. 781

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR CASKEY.

Pre-filed December 1, 2003, and ordered printed.

Read 2nd time January 8, 2004, and referred to the Committee on the Judiciary and Civil and Criminal Jurisprudence.

Reported from the Committee February 9, 2004, with recommendation that the bill do pass and be placed on the Consent Calendar.

Taken up February 25, 2004. Read 3rd time and placed upon its final passage; bill passed.

3002S.01P

TERRY L. SPIELER, Secretary.

AN ACT

To repeal section 491.205, RSMo, and to enact in lieu thereof one new section relating to witness immunity applications.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 491.205, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 491.205, to read as follows:

491.205. 1. In the case of any individual who has been or may be called to testify or provide other information at any proceeding ancillary to or before a circuit or associate circuit court or grand jury of the state of Missouri, the judge of the circuit in which the proceeding is or may be held may issue, in accordance with subsection 2 of this section, upon the written request of the prosecuting attorney an order requiring such individual to give testimony or provide other information which the individual refuses to give or provide on the basis of the individual's privilege against self-incrimination. When such an order is issued, the witness may not refuse to comply with the order on the basis of the witness's privilege against self-incrimination, but after complying with the order and giving the testimony or producing the evidence compelled by the order, no such person shall be criminally prosecuted or subjected to any criminal penalty for or on account of any act, transaction, matter or thing which is the subject matter of the inquiry in which the person testifies or produces evidence, except a prosecution for perjury, giving a false or misleading statement or contempt committed in answering or failing to answer, or in producing or failing to produce evidence

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

in accordance with the order.

2. A prosecuting attorney may be granted an order compelling a witness to testify and produce evidence upon the approval of a verified application for witness immunity heard by a judge of the circuit court. The judge [hearing the application for witness immunity may not preside over a grand jury proceeding where such testimony is given, and may not hear the subsequent criminal trial or any ancillary proceeding for which the immunity applies] **shall hold a nonadversary hearing on the application for witness immunity to determine whether sufficient proof has been offered to justify the issuance of such order.** Such application shall offer proof that:

(1) Such individual has refused or is likely to refuse to testify or provide other information on the basis of the individual's privilege against self-incrimination; and either:

(2) The testimony or other information to be provided by such individual is necessary to the investigation or prosecution and is otherwise unobtainable; or

(3) The testimony or other information to be provided by such individual is necessary for the prosecutor to prove a defendant's guilt beyond a reasonable doubt.

3. If a person refuses to testify on the basis of such person's privilege against self-incrimination after being given an order to testify under this section or produce evidence or other information, such person shall be adjudged in contempt and committed to the county jail until such time as the person purges himself or herself of this contempt by testifying or producing evidence and information as ordered, or the trial for which the person's testimony was requested has concluded. In no event shall the length of confinement exceed twelve months.

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